



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 19.03.2024.

Pronounced on : 01.04.2024

Case:- WP(Crl) No. 82/2023

Raja Ilyas Makroo, (Aged 25 years)

S/o : Gh. Mohammad Makroo,

R/o : Eidgah Arwani Bijbehara, District : Anantnag,

Through his father, Gh. Mohammad Makroo, (aged about 50 years)

R/o : Arwani Bijbehara, District Anantnag.

...Petitioner(s)

Through: Mr. Mukhtar Ahmad Makroo, Advocate

Vs

1. Union territory of Jammu and Kashmir through Principal Secretary to Govt., Home Department, Civil Secretariat, Srinagar/ Jammu.

2. District Magistrate, Anantnag.

..... Respondent(s)

Through: Mr. Allaudin Ganai, AAG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard the learned counsel for both sides. Perused the writ pleadings and the record therewith.

2. The petitioner is twenty five (25) years aged young man who, upon being allegedly found to be on the wrong side of law has been subjected to suffer preventive detention by an order passed by the respondent No. 2 – District Magistrate, Anantnag acting in exercise of the power under the Jammu & Kashmir Public Safety Act, 1978 and that is the cause of action for the



petitioner acting through his father – Gh. Mohammad Makroo to come up with the present writ petition instituted on 02.03.2023 for seeking quashment of his preventive detention and seeking restoration of his personal liberty so as to enable him to resume to his pursuit of life as a free citizen of India.

3. The respondent No. 2 – District Magistrate, Anantnag came to be approached by the Sr. Superintendent of Police (SSP), Anantnag with a letter No.CS/71/2022/10538-542 dated 27.06.2022 bearing a dossier against the petitioner for seeking his preventive detention alleging his activities prejudicial to the security of the State.

4. In response to the dossier so submitted by the Sr. Superintendent of Police (SSP), Anantnag, the respondent No. 2 – District Magistrate, Anantnag came to formulate the grounds of detention giving him subjective satisfaction for ordering the preventive detention of the petitioner holding his reported alleged activities being prejudicial to the security of the state warranting his preventive detention under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

5. Upon the grounds of detention so formulated, the respondent No. 2 – District Magistrate, Anantnag came to pass an order No. 44/DMA/PSA/DET/2022 dated 29.06.2022 ordering the preventive detention of the petitioner and upon his



consequent arrest to be lodged in detainment in the District Jail, Kishtwar.

6. In the grounds of detention, the petitioner came to be referred to be a student on the Rolls of the Govt. Degree College (Boys), Anantnag but instead of attending studies is alleged to be engaged in a stone pelting cases leading to his involvement and implication in FIR No. 179/2016 & FIR No. 221/2016 both registered by the Police Station Bijbehara for alleged commission of offences under the Ranbir Penal Code and the Public Property (Prevention of Damage) Act, 1985.

7. In the grounds of detention, the petitioner is being profiled to be in close contact with the banned terrorist organization HM Outfit, aiming and intending to provide logistic support in terms of food, shelter and carrying transportation to terrorists from one place to another particularly in Anantnag district and also involved in motivating the youth to join the militant ranks. The petitioner is also alleged to be assigned a task to keep close vigil on security forces to carry out the terrorist attacks. With this profile in the wake of then forthcoming annual Amarnath Religious Yatra the petitioner's personal liberty was reckoned to be a risk thereby resulting in preparation of dossier against him.



8. What is the outcome of the aforesaid two FIRs in the form of investigation and presentation of respective cases before the competent criminal courts of law is not forthcoming from the grounds of detention framed by the respondent No. 2 – District Magistrate, Anantnag, meaning thereby it is left open by the respondent No. 2- District Magistrate, Anantnag for anyone to make guess of his/her own including this Court to exercise its own guess.

9. The petitioner came to be detained in execution of the aforesaid preventive detention order on 12.02.2023 lodged in the District Jail, Kishtwar.

10. The preventive detention order above referred of the petitioner came to be approved by the Govt. of UT of J&K vide a Govt. Order No. Home/PB-V/1580 of 2022 dated 07.07.2022.

11. Against his said preventive detention, the petitioner came to make a representation on 20.02.2023.

12. Acting upon the Advisory Board's Opinion report holding the preventive detention of the petitioner to be justified, the Govt. of UT of Jammu & Kashmir, vide Govt. Order No. Home/PB-V/364 of 2023 dated 21.02.2023, came to confirm the preventive detention of the petitioner to last for a period of two years which period is in state of currency.



13. The petitioner is alleging his preventive detention to be an abuse of process of law and terming it to be a punitive oriented rather than preventive minded. The petitioner has referred his detention to be based on stale grounds particularly when for the same set of reasons the petitioner had come to be subjected to preventive detention on earlier occasion when by virtue of an Order No. 46/DMP/PSA/2018 dated 06.10.2018 passed by the District Magistrate, Pulwama under the Jammu & Kashmir Public Safety Act, 1978 the petitioner had come to be detained. Against his said first time ordered preventive detention, the petitioner had filed a writ petition HCP No. 348/2018, which resulted in the quashment of the preventive detention of the petitioner in terms of the judgment dated 26.02.2019 of this Court.

14. When this Court examines the present preventive detention of the petitioner, as effected vide impugned detention order No. 44/DMA/PSA/DET/2022 dated 29.06.2022 in the light of the grounds of detention purportedly supporting the impugned preventive detention order, the two FIRs referred against the petitioner are of 2016, meaning thereby that same set of FIRs as mentioned in the first preventive detention order and the grounds of detention therewith *qua* the petitioner had taken effect and reference and, therefore, both the said FIRs as a ground of



detention in the current detention order of the petitioner are reckoned to be state.

15. Once this Court takes out the said two FIRs out of purview to be the basis giving subjective satisfaction to the respondent No. 2 – District Magistrate, Anantnag, then what is left in the grounds of detention is nothing but vagueness of the grounds of detention which are so generalized that on the basis of the so-called grounds of detention even subjecting a person to suffer proceedings under section 107 read with 151 of the Code of Criminal Procedure, 1908 would be a demanding task for the Police before an Executive Magistrate for the purpose of binding the petitioner to execute a bond for keeping peace for a given period of time.

16. Vagueness vitiates a preventive detention order and, therefore, any preventive detention order which rests merely on vagueness of the grounds of detention self renders itself an unwarranted preventive detention jeopardizing the fundamental right to personal liberty of a citizen.

17. Accordingly, in the present case the said fundamental right of the petitioner has been infringed by his second time preventive detention as ordered by the respondent No. 2 – District Magistrate, Anantnag.



18. In the entire grounds of detention in support of his impugned detention order and also in the counter affidavit submitted on behalf of the respondent No. 2 – District Magistrate, Anantnag in response to the present writ petition, this Court finds that the Sr. Superintendent of Police (SSP), Anantnag and the respondent No. 2- District Magistrate, Anantnag have no idea of the fact that the petitioner had been subjected to a preventive detention on an earlier occasion in terms of preventive detention order No.46/DMP/PSA/2018 dated 06.10.2018 which came to be quashed in terms of judgment dated 26.02.2019 in a writ petition HCP No. 348/2018.

19. This omission does not commend an easy acceptance for this Court to believe that the Govt. of UT of Jammu & Kashmir and the authorities and the officials under it i.e. the Sr. Superintendent of Police (SSP), Anantnag and the respondent No. 2 – District Magistrate, Anantnag can be so ignorant of such a vital aspect attending the petitioner and if they were so ignorant then their discretion and judgment to process a case for preventive detention against any person and in particular the petitioner is rendered to be a serious aspect as to whether it is an outcome of a fair and unprejudiced application of mind on the part of the sponsoring as well as the preventive detention making



authority and the inference and conclusion of this Court has to be no.

20. In the light of the aforesaid facts and circumstances of the case, the preventive detention custody of the petitioner is held to be illegal and deserving to be set aside. Accordingly, this Court holds and declares the preventive detention order No. 44/DMA/PSA/DET/2022 dated 29.06.2022 passed by the District Magistrate, Anantnag read with consequent approval and confirmation order passed by the Govt. of UT of Jammu & Kashmir with respect to the preventive detention of the petitioner as illegal and, therefore, quashes the same.

21. The petitioner is held entitled to be restored to his personal liberty forthwith. The superintendent of the concerned Jail as well as the respondent No.2-District Magistrate, Anantnag to ensure that the petitioner's personal liberty is restored by his release from the concerned Jail.

22. **Disposed of** accordingly.

23. Detention record, if any, is returned back.

(RAHUL BHARTI)
JUDGE

SRINAGAR

01.04.2024.

Muneesh

Whether the order is speaking : **Yes**
Whether the order is reportable: **Yes**